

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COUNTY OF COOK, THE VILLAGE OF)
EAST HAZEL CREST and THE VILLAGE OF)
HAZEL CREST, bodies politic and corporate,)

Petitioners,)

v.)

ILLINOIS CENTRAL RAILROAD)
COMPANY and THE STATE OF ILLINOIS,)
DEPARTMENT OF TRANSPORTATION,)

Respondents.)

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Illinois Commerce Commission
RAIL SAFETY SECTION

No. T-05-0051

**ILLINOIS CENTRAL RAILROAD COMPANY'S MOTION TO DISMISS
THE AMENDED PETITION OR TO GRANT OTHER RELIEF**

Respondent, Illinois Central Railroad Company ("Illinois Central"), by its attorneys, Freeborn & Peters LLP, respectfully move the Illinois Commerce Commission ("Commission") to dismiss the Amended Petition for the following reasons:


1. The claims asserted against Illinois Central, pursuant to Section 5/2-619(a)(9), are barred by an affirmative matter, to wit: The Petitioners base their entire request for allocation of costs to Illinois Central on a void and unenforceable ordinance;
2. Petitioners failed to state a claim under and 735 ILCS 5/2-615 because the have not alleged any benefit to Illinois Central which would make it an affected party under law. Moreover, because this is a federally funded project, Petitioners are barred – as a matter of law – from alleging that Illinois Central enjoys a benefit from the Project and that Illinois Central should have to bear any of the costs; and,
3. Petitioners also failed to state a claim under § 5/2-615 because the relief sought cannot be ordered by the Commission. Petitioner seek approval of the design plans and an allocation of costs to Illinois Central for certain portions of the construction project. However, conditions

precedent to approval of the projects design plans have not been met, which necessitates dismissal of the Petition. According to Petitioner's project plans and specifications, the proposed detention basin and pump house will be located on real property owned by Illinois Central. No easement agreements have been entered into between the Petitioners and Illinois Central to allow for the proposed use of the land. Moreover, Petitioners have not instituted eminent domain proceedings or sought the necessary approval of the Commission to begin condemnation proceedings. As a result, the Commission cannot order the relief sought in the Petition because it would amount to an unconstitutional taking of Illinois Central's land.

Accordingly, for the reasons set forth in the Memorandum of Law submitted in support of this Motion, Illinois Central respectfully requests that the Commission enter an Order dismissing the Amended Petition with prejudice. In the alternative, Illinois Central respectfully request that the Commission enter an Order striking from the Amended Petition any and all references to the 1918 Agreement as it is null and void, or for any other relief that it deems appropriate and just.

Respectfully submitted,

Illinois Central Railroad Company

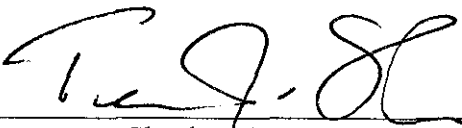
By: 
One of Respondent's Attorneys

Michael J. Scotti,
Michael T. Franz
Terrence J. Sheahan
Freeborn & Peters LLP
311 South Wacker
Suite 3000
Chicago, Illinois 60606
(312) 360-6000
Firm No: 71182
Date: April 4, 2006

*Attorneys for Respondent,
Illinois Central Railroad Company*

CERTIFICATE OF SERVICE

I certify that on April 4, 2006, I served Illinois Central Railroad Company's Motion to Dismiss the Amended Petition or to Grant Other Relief; its Supporting Memorandum of Law; the Supplemental Entry of Appearance of Michael T. Franz; and the Supplemental Entry of Appearance of Terrence J. Sheahan on all attorneys of record and entities named in the attached Service List by mailing a true copy of same, postage prepaid, via first class U.S. mail to the attorneys listed on the attached Service List from 311 South Wacker Drive, Chicago, Illinois 60606, before 5:00 p.m.



Terrence J. Sheahan

SERVICE LIST

Jonathon Dykstra
Burke Engineering Corporation
18330 Distinctive Drive
Orland Park, Illinois 60467

William P. Motto
Assistant States Attorney
Office of the Cook County States Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

Victor A. Modeer
Director of Highways, IDOT
Attn: Jeff Harpring, Room 205
2300 S. Dirksen Parkway
Springfield, Illinois 62764

Ellen J. Schanzle-Haskins
Chief Counsel, IDOT
2300 S. Dirksen Parkway
Room 300
Springfield, Illinois 62764

Thomas A. Brown
East Hazel Crest Village President
1904 W. 174th Street
Hazel Crest, Illinois 60429-1826

William Browne
Hazel Crest Village President
3000 W. 170th Place
Hazel Crest, Illinois 60429-1174

Eric Kellogg, Mayor
City of Harvey
15320 Broadway Avenue
Harvey, Illinois 60426-3305

Walter S. Kos
Superintendent of Highways
Cook County, Illinois
69 W. Washington Street
23rd Floor
Chicago, Illinois 60602

Dave Lazarides
Acting Director of Processing
Illinois Commerce Commission
527 E. Capital Avenue
Springfield, Illinois 62710